

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 38 of 2018

IN THE MATTER OF:

SREI Infrastructure Finance Ltd.

...Appellant

Vs

Right Tower Pvt. Ltd. & Anr.

....Respondents

Present:

**For Appellant: Mr. Jayant Mehta, Mr. Pankaj Jain, Mr. Shubhan Roy and Mr. Rahul Kukreja, Advocates.
Ms. Neha Somani, Pr.CS.**

For Respondents: Mr. Sabsyasachi Chaudhary and Mr. Ashish Choudhury, Advocates.

ORDER

20.02.2018. The Appellant (Financial Creditor) has preferred this appeal against the order dated 2nd January, 2018 passed by Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in CP(IB) No.505/KB/2017, which reads as follows:

“ORDER

Ld. Counsel for the financial creditor and the corporate debtor as well as the Ld. Counsel for the Intervener is present.

Ld. Counsel for the Intervener made a request that petitioner be directed to serve a copy of the petition so that he can file detail reply.

Ld. Counsel for the financial creditor has raised objection to the above and submitted that Ld. Counsel for the Intervener has no right to intervene in the matter because the dispute is between the financial creditor and the corporate debtor.

Ld. Counsel for the Intervener made a request that if the copy of the petition is given, then only he can show in reply that the petition has been filed in the Court is collusive in nature and simply to defraud the other.

We hereby order the petitioner to serve a copy of the petition to the Intervener today. Reply may be filed within 3 days with a copy in advance to the opposite party. Thereafter rejoinder, if any, may be filed within 3 days with a copy in advance to the opposite party.

List it on 15/01/2018 for admission.”

2. Learned counsel appearing on behalf of the appellant submits that the application under section 55 to 58 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') has been filed by the Appellant against the 1st Respondent which is pending before the Adjudicating Authority. The Intervener, 2nd Respondent herein has no *locus standi* to maintain any petition as he is neither a shareholder nor a creditor nor a debtor nor a financial creditor nor a corporate debtor. The Intervener has no privity of contract with any party.

3. Learned counsel appearing on behalf of 2nd Respondent (Intervener before the Adjudicating Authority) refer to Section 65 of 'I&B Code', which reads as follows:

“65. Fraudulent or malicious initiation of proceedings. – (1) *If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may*

be, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.”

4. It is submitted that if any person initiates the Insolvency Resolution Process fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, the Adjudicating Authority may impose such person any penalty as stipulated under Section 65. According to 2nd Respondent (Intervener), any person can bring to the notice of the Adjudicating Authority that the Insolvency Resolution Process has been initiated by the person fraudulently and with malicious intent for the purpose other than resolution of insolvency. For bringing the aforesaid facts to the notice of the Adjudicating Authority it is not necessary that he should be a shareholder or a creditor or a debtor for the Corporate Debtor. It is submitted that the 2nd Respondent (Intervener) intends to bring certain facts to the notice of the Adjudicating Authority, to suggest that it is a case for initiating proceeding and to punish the concern person under Section 65.

5. We have heard Learned Counsel for the parties. The Corporate Insolvency Resolution Process can be initiated under Section 7 or Section 9 or Section 10 of 'I&B Code'. Section 55 to 58 of 'I&B Code' also relates to initiation of Corporate Insolvency Resolution Process known as 'Fast Track Corporate Insolvency Resolution Process'. Section 65 of 'I&B Code' which relates to penal provision not only covers initiation of Corporate Insolvency Resolution Process under

Section 7 or 9 or 10 but will also cover 'Fast Track Corporate Insolvency Resolution Process', if initiated under Section 55 to 58 of the 'I&B Code'.

6. Such being the position, any person may intervene and may bring the facts to the notice of the Adjudicating Authority. So far as the Respondent (Intervener) is concerned, we leave the question open for Adjudicating Authority to decide the issues as raised and alleged by the 2nd Respondent (Intervener) keeping in mind the question of maintainability of the application as raised by the Appellant.

7 The Appellant has already served the copy of the paper book to the learned counsel for the 2nd Respondent (Intervener) which includes petition under Section 55 to 58 and therefore the service of petition under Section 55 to 58 to the 2nd Respondent (Intervener) stands complied.

8. The case be remitted back to the Adjudicating Authority to decide all the issues including the question of maintainability of the intervention petition keeping in mind the allegations made therein and the penal provisions including Section 65 as referred to above. The appeal stands disposed of with aforesaid observations.

(Justice S. J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

am/gc